

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 595 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Samir Dip, aged about 49 years, S/o Late Samuel Dip, At-Birmal, PO-Birmal, PS/Dist-Bargarh, at present working as Telegraph Messenger, O/o Telegraph master, Bargarh..

.....Applicant.

VERSUS

1. Union of India represented through its Secretary, Department of Telecommunication, Ministry of Communication, govt. of India, New Delhi.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda.
3. Superintendent of Post Offices, Sambalpur Division, At/PO/dist-Sambalpur.
4. Chief Executive Officer, Bharat Sanchar Nigam Limited, Mandi House, New Delhi.
5. Chief General Manager, Telecom, Odisha Circle, At/PO-Bhubaneswar, Dist.- Khurda.
6. General Manager, Telecom District, Sambalpur, At/PO/Dist-Sambalpur.
7. Telecom District Engineer, O/o General Manager, Telecom District, Sambalpur, At/PO/Dist-Sambalpur.
8. Sub Divisional Officer (Phone), BSNL, At/PO/Dist-Bargarh.
9. Telegraph master ' Incharge', Telegraph Office, At/PO/Dist-Bargarh.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.B.Swain, counsel
Mr.S.Behera, counsel
Mr.K.C.Kanungo, counsel

Heard & reserved on : 26.7.2019 Order on : 27.8.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(i) That the respondents' particularly respondent No. 4-9 be directed to regularize/absorb the applicant into services as Telegraph Messenger w.e.f. 1.4.1995 with all consequential service benefits.
- ii) That the order dated 12.3.1997 and 15.1.1998 issued by the Telecom District Engineer Sambalpur be quashed since the applicant had been performing his duty for more than eight hours per day.
- iii) that the respondents 4-9 be directed to pay the differential amount w.e.f. 1.4.1995 at the rate of minimum scale of Telegraph

Messenger i.e. Gr-D post in view of the letter dated 9.5.1995 (Annexure A/5) with 12% interest.

iv) And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

2. The facts in brief are that the applicant was provisionally appointed as ED Telegram Messenger under the respondents on 21.12.1990 (Annexure A/1). On 31.3.1995, he was asked to report for duty to SDO, Bargarh (respondent no.8) on deputation, where he joined as ED Telegram Messenger with the stipulated duty hour of 5 hours per day. The applicant's representation for increased pay on the ground that his duty hours were 8 hours per day, was not considered by the respondents. The applicant continued submitting representations. On 21.10.2003 (Annexure-A/13), the applicant was asked to submit certain documents for regularization of his services.

3. After discontinuation of Telegram services with effect from 15.7.2013, the applicant was continued to be engaged for Mobile/LL/Misc. Works under the respondent No.8 (Annexure A/15). On 16.2.2017 (Annexure-A/17), the applicant submitted another representation for permanent absorption in the department and for enhancement of his pay/wages. Since it was not considered, this OA has been filed by the applicant.

4. Counter has been filed resisting the OA, mainly on the ground that the applicant is not an employee of BSNL as he is an Extra Departmental staff of Postal Department, who was on deputation to the Telecom department in 1990. Thereafter, he was continuing as such even after formation of BSNL with effect from 1.10.2000. It is stated that although the BSNL had taken steps for regularization of temporary and casual workers, but the case of the applicant could not be considered, as he was on deputation from the department of Posts. It is further stated that regularization of the employees in BSNL is regulated in terms of the judgment dated 10.4.2006 of Hon'ble Apex Court in the case of State of Karnataka vs. Umadevi in Civil Appeal nos. 3595-3612 of 1999 and in the case of BSNL vs. Teja Singh in SLP(C) No. 7803/2006. It is further stated that the Tribunal vide order dated 29.6.2012 in OA No. 195/2011 has also rejected the claim for regularization. It was stated that the applicant was not a casual employee of the BSNL as he was a deputed ED staff of the Department of Post, who was being paid Rs. 4200/- per month.

5. The applicant had filed the MA No. 330/2019 stating that he was not being paid wages since December, 2018. He also filed the MA No. 267/2018 praying for a direction to pay the salary of an ED employee of the Postal Department to the applicant. The MA No. 330/2019 was considered and disposed of vide order dated 1.5.2019 after learned counsel for the BSNL

informed that the pay of the applicant has been released by the respondents in the meantime. The MA No. 267/2018 was also disposed of after fixing the date for final hearing for disposal of the OA. No Rejoinder has been filed by the applicant in this OA.

6. We heard learned counsel for the applicant who also filed a written note of arguments enclosing the following judgments in support of the applicant's case :-

- i) State of Punjab & Others -vs- Jagjit Singh & Others [(2017) 1 SCC (L&S) 1]
- ii) Sri Rajendra Kumar Nayak -vs- OMC Ltd. & Others [2017 (II) ILR page 912]

Learned counsel for the applicant stressed on the point that the applicant was discharging the same work as that of a regular worker and he is being engaged for 8 hours daily against sanctioned post as per the letter at Annexure-A/7 and Annexure-A/5, for which, the applicant was entitled for equal pay for equal work and his services deserve to be regularized in BSNL.

7. Learned counsel for the respondent No. 4 to 8, Mr. K.C. Kanungo was also heard and he filed the written note of submission adding no new point. He submitted that the status of the applicant is that although he was a postal staff, he had continued on deputation beyond the stipulated period and the applicant has also admitted to be repatriated to the Postal department.

8. Mr. B. Swain, learned counsel for the respondent No. 1 to 3 was also heard. He submitted that the authorities of Department of Posts have initiated steps to recall the applicant, who is an ED staff of the Postal department continuing on deputation to BSNL.

9. We have considered the pleadings as well as the submissions of the parties in this case. It is undisputed that the applicant is an ED employee of the Department of Post. He was deputed to work under Telecom department in 1990 and he is continuing as such since then. Although the BSNL has not accepting him as their employee, no document has been produced before us to show that sincere steps have been taken by BSNL to return the applicant to the Postal department after completion of his deputation period.

10. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of Jagjit Singh (supra), in which the principle of "equal pay for equal work" in relation to the temporary/daily wage/ad-hoc/casual/contractual employees has been considered. Hon'ble Apex Court in

this case, after examining the earlier case laws on the subject, have held as under :

"60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay- scale), extended to regular employees, holding the same post."

11. Learned counsel for the applicant in the written notes of submission has also enclosed a copy of the judgment of Hon'ble High Court in the case of Shri Rajendra Kumar Nayak (*supra*), in which the question of regularisation of the temporary/ad hoc employees who had continued for long spell was considered. This case is factually different from the facts of this OA since in that case before Hon'ble High Court, the concerned employee was continuing on ad hoc/temporary basis for a long spell. He was initially appointed for 89 days but was allowed regular pay scale with allowances and his tenure of service was extended from time to time without any break and he was performing duty of Junior Assistant from the date of his joining. It is also observed in the cited judgment that other persons appointed after the applicant on ad hoc/temporary basis have already been regularised. In such a background, the direction was given in the cited judgment for regularisation of the concerned petitioner. The judgment is not applicable to the present OA, as admittedly the applicant was initially appointed as an Extra Departmental Telegram

Messenger on deputation and no persons similar to the applicant was regularised although he was appointed after the applicant. Hence the cited judgment is inapplicable for the present OA.

12. However, the judgment in the case of Jagjit Singh (supra) will be applicable to the present OA in view of the contention of the applicant that he was doing the work of a regular employee with duty of 8 hours daily and that his case for higher remuneration was recommended vide letter dated 3.9.1996 (Annexure A/7). He claimed that he was engaged for 8 hours per day vide paragraph 4.8 of the OA. The respondents in reply to the said para have simply stated that the applicant was appointed by Department of Posts as an Extra Departmental Staff and was deputed to the Department of Telecommunication to work as ED Telegram Messenger w.e.f. 1.4.1995. In the letter at Annexure A/7 of the OA, it is clearly stated that the applicant was working as Telegram Messenger in Bargarh Telegraph Office and performing 8 hours of duty. Similar recommendation was sent by respondent No.8 vide letter dated 9.9.1996 (Annexure A/8) to the higher authorities and subsequently vide letter dated 15.1.1998 (Annexure A/10) the duty hours of the applicant was fixed at 7 hours per day w.e.f. 1.4.1995. There is no document placed before us by the respondents to counter this submission.

13. In view of the above discussions, the applicant was allowed to work under the respondents No. 4 & 8 since 1995 uninterruptedly as an ED Telegram Messenger and he was given duty to the extent of at least 7 hours per day as revealed from the order at Annexure A/10. As per the existing rules of the Department of Posts, an ED Staff is required to attend to duty of maximum 5 hours per day and the TRCA is payable to the ED staffs based on the work load subject to revision of the TRCA from time to time by the authorities. In addition, the ED Staffs are also entitled for participation in departmental examinations conducted for promotion to the regular cadre. No such benefit was extended to the applicant, who is being paid @ Rs.4200/- per month as stated by the respondents in their pleadings, without furnishing any justification for the said payment.

14. Based on the facts available on record and the circumstances of the case, we are of the view that the case of the applicant is squarely covered by the judgment of Hon'ble Apex Court in the case of Jagjit Singh (supra) and the principle of "equal pay for equal work" is applicable in this case in view of the letters at Annexure A/7, Annexure A/10 and other documents placed on record. Hence, the applicant is entitled to the minimum of the pay scale of the regular staff along with the allowances as applicable. Since the applicant has approached this Tribunal in 2017, we are unable to allow such benefit from the

date claimed by him in the OA. He is entitled for arrear wages in the minimum of the pay scale which is applicable to the regular Group 'D' employee with effect from 3 years prior to the filing of the present OA i.e. from the month of October 2014 till he continues working under the respondents No. 4 & 8, who also need to take steps for repatriation of the applicant to the Department of Posts under the respondents No. 2 & 3 as quickly as possible. Respondents No. 2 & 3 are directed to take back the applicant and suitably deploy him as a ED/GDS in an office as permissible under the existing rules and extend consequential benefits as per the provisions of the rules. The respondents are to comply this order within four months from the date of receipt of the copy of this order.

15. The OA is allowed in part in terms of the paragraph 14 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

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